

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF TEXAS  
3                   AUSTIN DIVISION

4                   BANDSPEED, INC., CAMBRIDGE SILICON RADIO LIMITED, )  
5                   ) )  
6                   VS. ) AU:11-CV-00771-LY )  
7                   ) )  
8                   ACER, INC., ACER AMERICA CORPORATION, BELKIN )  
9                   INTERNATIONAL, INC., BELKIN, INC., CASIO COMPUTER CO., )  
10                  LTD., CASIO HITACHI MOBILE COMMUNICATIONS CO., LTD., )  
11                  CASIO AMERICA, INC., DELL INC., GARMIN INTERNATIONAL, )  
12                  INC., GARMIN USA, INC., GN NETCOM A/S, GN U.S., INC., )  
13                  HEWLETT-PACKARD COMPANY, HEWLETT-PACKARD DEVELOPMENT )  
14                  COMPANY, L.P., HTC CORPORATION, HTC AMERICA, INC., HUAWEI )  
15                  TECHNOLOGIES COMPANY, LTD., KYOCERA CORPORATION, KYOCERA )  
16                  INTERNATIONAL, INC., KYOCERA COMMUNICATIONS, INC., )  
17                  KYOCERA WIRELESS CORPORATION, LENOVO (UNITED STATES) )  
18                  INC., LG ELECTRONICS, INC., LG ELECTRONICS U.S.A., INC., )  
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21                  SOLUTIONS, INC., NOKIA CORPORATION, NOKIA INC., PANTECH )  
22                  WIRELESS, INC., PLANTRONICS, INC., RESEARCH IN MOTION )  
23                  ) )  
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25                  TELECOMMUNICATIONS AMERICA, LLC, TOMTOM INTERNATIONAL )  
                    ) )  
                    B.V., TOMTOM, INC., TOSHIBA CORPORATION, TOSHIBA AMERICA )  
                    ) )  
                    INFORMATION SYSTEMS, INC., TOSHIBA AMERICA, INC., )  
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                    BLUETOOTH SIG, INC., MOTOROLA MOBILITY, INC., PANTECH )  
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                    ) )  
                    CAMBRIDGE SILICON RADIO LIMITED, BLUETOOTH SIG, INC. ) APRIL 12, 2012

1 \*\*\*\*\*  
2 TRANSCRIPT OF NON-EVIDENTIARY HEARING  
3 BEFORE THE HONORABLE LEE YEAKEL  
4 \*\*\*\*\*

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22  
23  
24 Proceedings recorded by computerized stenography, transcript  
25 produced by computer.

09:39:30 1 (Open Court)

10:02:58 2 THE COURT: Are there any lawyers left in Austin that  
10:03:01 3 are not in front of me today? Well, anybody who is left in  
10:03:10 4 Austin who is not here and doesn't have a member of his or her  
10:03:13 5 firm here clearly is suffering through the recession unlike the  
10:03:19 6 rest of us.

10:03:20 7 I'm not going to take up your time going around the  
10:03:24 8 room and having you announce. Just whenever you get up to  
10:03:28 9 speak, announce who you are and who you represent. And before  
10:03:35 10 everyone leaves, make sure that Ms. Rodriguez, the reporter,  
10:03:39 11 has your appearance. And we'll do it that way. Otherwise, we  
10:03:43 12 burn up what precious time I have to be here before my next  
10:03:48 13 matter.

10:03:49 14 All right. What we are here for is a hearing that  
10:03:57 15 was ordered in my order of December 14th, 2011, which reads:  
10:04:09 16 The case is set for a scheduling conference on Thursday,  
10:04:12 17 April 12th, 2012 at 10 a.m. in Courtroom Number 1, second  
10:04:17 18 floor, United States Courthouse, et cetera, to discuss  
10:04:21 19 revisions to the order that I rendered that date that may be  
10:04:23 20 necessary of additional chip manufacturers or suppliers added as  
10:04:29 21 parties in the case, as well as a schedule for the issues  
10:04:32 22 beyond those in Bandspeed and CSR.

10:04:36 23 The Court anticipates determining all scheduling  
10:04:40 24 matters not specifically addressed in this order at the  
10:04:42 25 conference. The parties are ordered to meet and confer prior

10:04:45 1 to the conference to agree on a schedule that reasonably  
10:04:55 2 accommodates one another.

10:04:57 3 Now, first off, however, before I get there, let me  
10:05:00 4 say that paragraph 7 of that order states that on or before  
10:05:03 5 April 5th, 2012, any chip supplier or manufacturer who has  
10:05:06 6 joined as a party in this case after the date of this order  
10:05:09 7 shall file and serve a list of claims other than those claims  
10:05:13 8 construed in this Court's August 12th, 2011 claims construction  
10:05:18 9 order contained in any patent-in-suit that the parties request  
10:05:23 10 the Court to construe and any objection the party may have to  
10:05:28 11 the Court's August 12th order. In every respect, the Court's  
10:05:31 12 August 12th order shall govern claims construction in the  
10:05:35 13 consolidated case.

10:05:37 14 Although I got in a bunch of things recently, I would  
10:05:47 15 say that this is an environmental disaster with the amount of  
10:05:51 16 paperwork and things we've got, except some of you came in a  
10:05:54 17 little early and heard me hearing closing arguments on the  
10:05:59 18 Sierra Club case. And lawyers pointed that out that in that  
10:06:02 19 case, it is environmental cases that do the most damage to the  
10:06:06 20 environment as opposed to patent cases. So you-all are off the  
10:06:10 21 hook on that.

10:06:11 22 But I have not found any additional lists of claims  
10:06:20 23 that any party desires me to construe, nor have I found an  
10:06:25 24 objection that any party may have to the August 12th order. Am  
10:06:29 25 I correct in that, or are there documents or electronic filings

10:06:35 1 floating around that I have not yet seen, because that would  
10:06:38 2 not be unusual?

10:06:41 3 MR. BOICE: Your Honor, Bill Boice for Motorola.

10:06:45 4 THE COURT: Come to the podium.

10:06:45 5 MR. BOICE: Sorry, Your Honor. Bill Boice for  
10:06:47 6 Motorola. I believe you are correct. We are not seeking any  
10:06:50 7 additional claims construction nor any objections.

10:06:58 8 THE COURT: All right. I just want to make sure,  
10:06:59 9 because when I look at the docket in this case, we're already  
10:06:59 10 at 877 documents. And that presumes that the clerk got all of  
10:07:03 11 the documents transferred over when I consolidated the existing  
10:07:07 12 cases. So I'm just trying to focus on what I have not dealt  
10:07:15 13 with.

10:07:15 14 Now, the second matter, then -- we'll go to  
10:07:19 15 paragraph 8 -- is the joint submission of proposed amended  
10:07:25 16 scheduling orders. Who wants to tell me about those? I will  
10:07:34 17 allow you to talk, but first let me address this to Ms. Frost.  
10:07:43 18 Is CSR in any way a party to any of these proposed amended  
10:07:49 19 scheduling orders? It's easy for me to read everybody else,  
10:07:53 20 but some of them are exhibits to others. They only came in  
10:07:56 21 yesterday. I cannot tell you how thrilled I am to get things  
10:08:00 22 of this length the day before I have a hearing scheduled. So I  
10:08:05 23 may not cover as much ground as I want to cover today, because  
10:08:10 24 if my docket wasn't large enough, it has gone off the charts in  
10:08:14 25 April and I have very little time in April.

10:08:18 1           Were it not for the fact that I was concerned that  
10:08:21 2 many of you were not having good billing months in April, I  
10:08:24 3 might have considered resetting this case. So, Ms. Frost, what  
10:08:28 4 is CSR's position on the joint proposed amended scheduling  
10:08:36 5 orders? And I presume you have seen them, number one?

10:08:39 6           MS. FROST: Good morning, Your Honor. And, yes, I  
10:08:40 7 saw them briefly last evening, probably a little after they  
10:08:43 8 were filed in the Court. And right now there's nothing that  
10:08:47 9 I'm aware of that impacts us directly.

10:08:56 10          THE COURT: So then let me then speak with  
10:08:58 11 Mr. Goodpastor about what they do, because I have not compared  
10:09:02 12 the dates in them yet to the dates that I had previously  
10:09:06 13 scheduled. So tell me what you attempt to do by these orders.

10:09:12 14          MR. GOODPASTOR: Chris Goodpastor for Bandspeed,  
10:09:17 15 Your Honor. Just one clarification with respect to what we've  
10:09:19 16 proposed as it relates to the CSR case. We sent an E-mail to  
10:09:24 17 Ms. Frost yesterday with this one particular issue, and  
10:09:28 18 Ms. Frost has told me that they oppose the addition of it.

10:09:31 19          But if you look on Exhibit A under -- on page 3 next  
10:09:36 20 to the date, December 28th, 2012, Bandspeed proposes adding  
10:09:46 21 another date by which we would limit our claims to ten in  
10:09:50 22 advance of trial and we would also ask CSR limit their  
10:09:53 23 invalidity references or accommodations to two at that time.

10:09:57 24          I understand that --

10:09:58 25          THE COURT: Where is that -- one of the things

10:10:00 1 that -- you heard me say this before, but you always get to  
10:10:08 2 hear me get on my high horse over and over again. And some  
10:10:10 3 people are new here, so they haven't heard this speech before.

10:10:14 4 Electronic filing is wonderful for lawyers and clerks  
10:10:16 5 of court. It is not particularly good for judges. One of the  
10:10:25 6 reasons it's not particularly good is represented by this  
10:10:27 7 filing, in that I have no problem probably with the substance  
10:10:31 8 of what you're doing, but it takes me a while to get what  
10:10:35 9 you're referring to because when we print it out, it doesn't  
10:10:39 10 give me tabbed pages where you can say, if you go to Tab A.  
10:10:43 11 You can just tell me go to exhibit something, and that still  
10:10:48 12 means I've got to flip through until I get to it.

10:10:52 13 So I am on page 3 of Exhibit A. And what paragraph  
10:10:54 14 are you referring to, Mr. Goodpastor.

10:10:57 15 MR. GOODPASTOR: The top paragraph. If you look at  
10:10:59 16 the --

10:11:00 17 THE COURT: I've got it.

10:11:01 18 MR. GOODPASTOR: -- case number, it's Document 867-1  
10:11:04 19 on page 3. And the top paragraph is December 28th, 2012.

10:11:09 20 THE COURT: All right. And, Ms. Frost, what is your  
10:11:12 21 or CSR's objection to that?

10:11:15 22 MS. FROST: Your Honor, first I obviously missed it,  
10:11:18 23 too, reading it on my Blackberry. So I empathize.

10:11:21 24 THE COURT: It's a hard effort. I understand that.

10:11:23 25 MS. FROST: Our objection is twofold. First, in our

10:11:26 1 scheduling order, I believe we have a date of August 4 --  
10:11:32 2 sometime in August for the close of fact discovery, and that it  
10:11:35 3 was our understanding that the limitation of claims by -- by  
10:11:41 4 Bandspeed would be made at the close of fact discovery and  
10:11:45 5 before the commencement of expert discovery in order to try to  
10:11:50 6 minimize inefficiencies and burdensomeness that having an  
10:11:54 7 expert go through 50 claims and do an analysis of 50 claims,  
10:12:00 8 when they're ultimately going to be boiled down to 10, seems  
10:12:05 9 inefficient and wasteful to us.

10:12:08 10 So our proposal has always been, if claims are going  
10:12:12 11 to be limited, which we believe they should be, they should be  
10:12:14 12 limited at the close of discovery. So for us that would be  
10:12:17 13 August of 2012.

10:12:18 14 With regard to limiting the number of invalidity  
10:12:22 15 contentions that we can make or references we can use, I have  
10:12:25 16 frankly never had anybody ask me to do that before and I can't  
10:12:28 17 possibly know whether that's a reasonable request at all until  
10:12:31 18 I know which claims are at issue. There may be claims about  
10:12:35 19 which we have to combine references. For example, for a 103  
10:12:38 20 rejection, we would -- our argument, for obviousness we would  
10:12:42 21 make, we might need four or five claims for that -- four or  
10:12:46 22 five references for that instead of just two. So we can't  
10:12:50 23 agree certainly in the abstract that, and I don't think we can  
10:12:53 24 agree to it in principle at all. And I'm sorry I missed it in  
10:12:57 25 the order.

10:12:58 1 THE COURT: No. That's all right. And I applaud  
10:13:02 2 Mr. Goodpastor for pointing it out.

10:13:06 3 MR. GOODPASTOR: Your Honor, I have three bullet  
10:13:08 4 points, if I may?

10:13:09 5 THE COURT: You may.

10:13:09 6 MR. GOODPASTOR: Okay. The limitation that's  
10:13:12 7 previously in the order after the close of fact discovery does  
10:13:15 8 not expressly state the number of claimants that we're to limit  
10:13:19 9 to.

10:13:19 10 THE COURT: I know it doesn't.

10:13:21 11 MR. GOODPASTOR: And, secondly, we do believe that  
10:13:23 12 expert discovery is relevant to our further limitation to  
10:13:26 13 claims. It's our understanding that it's preferable to get  
10:13:32 14 down to ten right before trial, and that's what we're trying to  
10:13:35 15 do. Also, we feel the same obligation should be put on CSR  
10:13:39 16 with respect to invalidity.

10:13:42 17 My -- what I'm hearing from Ms. Frost is maybe they  
10:13:44 18 have some problem with the number, but not the concept. But we  
10:13:49 19 think it would be appropriate, if we're going to limit and  
10:13:52 20 offer to make that limitation to ten, that there should be some  
10:13:55 21 limitations on the invalidity references.

10:13:58 22 THE COURT: Well, I'm not going to take that up here  
10:14:00 23 today. It's something y'all should have discussed before you  
10:14:02 24 came in here today. I don't have time or the desire to conduct  
10:14:09 25 conferences between the two of you. Right now what I am trying

10:14:18 1 to do is get the trial in this case, the first phase of it  
10:14:31 2 between Bandspeed and CSR, to trial as I have previously  
10:14:37 3 scheduled it. Let me inquire, because I haven't read through  
10:14:47 4 this, does your proposed scheduling changes affect the trial  
10:14:53 5 date, Mr. Goodpastor.

10:14:57 6 MR. GOODPASTOR: Or proposed scheduling changes do  
10:14:59 7 not currently affect the trial date. However, we do state in  
10:15:02 8 our footnote on page 867-1 -- I think it's the one marked page  
10:15:07 9 2 of 7 -- that much of this schedule depends upon our ability  
10:15:13 10 to get the stipulated discovery from the -- what we call the  
10:15:18 11 CSR end-product defendants. That is the discovery we need from  
10:15:24 12 those end-product defendants who use CSR chips to prosecute our  
10:15:29 13 claims and defenses with respect to the CSR case.

10:15:32 14 It's discovery we've requested. We think it's due.  
10:15:36 15 But to kind of cut to the chase and streamline things as much  
10:15:40 16 as possible, we put in very specific proposals about what  
10:15:44 17 information needs to be disclosed on April 26th regarding all  
10:15:49 18 of the end-product accused products, all of the chips used in  
10:15:53 19 those accused products, and the volume of those products sold.  
10:15:56 20 That information --

10:15:57 21 THE COURT: All right. Now, where do I find that?

10:15:59 22 MR. GOODPASTOR: Your Honor, that is on document  
10:16:01 23 867-1, page 2 of 7. It's the first entry of April 26th, 2012.

10:16:11 24 THE COURT: 867-1. Page 2 what?

10:16:17 25 MR. GOODPASTOR: Page 2 of 7. It's the very first

10:16:19 1 entry on Bandspeed's proposed order that's attached as  
10:16:23 2 Exhibit A.

10:16:25 3 THE COURT: All right. I'm just trying to figure out  
10:16:28 4 what page number. Oh. Two of seven. I wasn't understanding  
10:16:31 5 you. All right. And do you define in here "end-product  
10:16:42 6 defendant"?

10:16:43 7 MR. GOODPASTOR: We could add that.

10:16:45 8 THE COURT: I mean, do they know who they are?

10:16:47 9 MR. GOODPASTOR: It's everyone but Bluetooth SIG and  
10:16:50 10 CSR.

10:16:51 11 THE COURT: It's not hard.

10:16:52 12 MR. GOODPASTOR: We can definitely add that. But  
10:16:57 13 what it does is we've asked for this information in discovery.  
10:17:00 14 The end-product defendants have previously taken the  
10:17:03 15 position -- I don't know if they continue to take the  
10:17:05 16 position -- that they're not going to respond to the  
10:17:07 17 discovery. But I think we've had some discussions that --

10:17:10 18 THE COURT: Well, I'm going to tell you basically  
10:17:13 19 where I am. I'm tired of worrying about discovery. My default  
10:17:16 20 is probably going to be, after I talk to you-all today, to give  
10:17:20 21 everybody all the discovery they want and be done with it. I'm  
10:17:23 22 tired of trying to manage discovery. I'm tired of dealing with  
10:17:27 23 y'all not being able to agree on it. I understand that you  
10:17:31 24 have good reasons, both of you, to resist things. I'm just  
10:17:36 25 tired of messing with it.

10:17:36 1 I think I've given you ample time to reach  
10:17:39 2 agreement. You cannot do it. I'm likely -- not to pick a  
10:17:42 3 side, I'm likely to come down -- I'm in the latter stages of  
10:17:46 4 dealing with the order that handles the previous discovery  
10:17:53 5 requests between CSR and Bandspeed that you couldn't agree on  
10:17:56 6 and the protective order that you can't agree on.

10:18:00 7 The problem that you run into is, once you can't  
10:18:04 8 agree, it becomes mine. That's why the taxpayers pay me. And  
10:18:13 9 what you run into is it takes me time to get things out because  
10:18:17 10 of the other cases that I have on my docket. That's the cross  
10:18:21 11 you bear. That will all get simpler when we get in the new  
10:18:28 12 courthouse, because we will have sufficient courtrooms for me  
10:18:31 13 to bring in a visiting judge to handle parts of my docket while  
10:18:35 14 I work on other parts of my docket. Right now I don't have any  
10:18:38 15 place to put a visiting judge if I got one up here. So it  
10:18:46 16 takes me longer and is taking me longer to deal with those  
10:18:48 17 matters than I thought it was going to take me to deal with  
10:18:52 18 those matters.

10:18:53 19 So the problem that you-all face, and I say this to  
10:18:59 20 everyone, is when you can't agree on something, it becomes mine  
10:19:02 21 to work out, which I don't mind doing. But it takes time to do  
10:19:07 22 that. And the time comes out of your time, when you could be  
10:19:12 23 doing something else or knowing how you're going to approach  
10:19:14 24 that. And that's just the world you live in. As I stated the  
10:19:19 25 last time we were all together, lawyers have a hard job and not

10:19:26 1 every case is easy. This case is a hard case, primarily  
10:19:33 2 logistically. I don't find it very difficult when I get the  
10:19:36 3 time to look at parts of it substantively, but it is a logistic  
10:19:43 4 problem for you-all and for the Courts.

10:19:46 5 One of things that was discussed at our last  
10:19:54 6 conference is how we handle -- if there is not a settlement  
10:19:57 7 after I try Bandspeed and CSR, the other cases, some people  
10:20:03 8 have concern about the American Invents Act and whether one can  
10:20:08 9 try this as a joint case. I explained to everyone, and I hope  
10:20:12 10 everyone is now comfortable with it, that I am not trying and  
10:20:16 11 am not going against the American's Invents Act when I combine  
10:20:19 12 everything for discovery.

10:20:21 13 To the extent there is disagreement on how to try the  
10:20:23 14 other cases, the way we will handle that is divide it out into  
10:20:29 15 the number of cases that the individual defendants desire to  
10:20:35 16 have tried alone. We will spend whatever time it takes to  
10:20:43 17 select a series juries, and we will line the cases up in the  
10:20:46 18 order they appear in the caption and try them *ad seriatim*. As  
10:20:53 19 soon as one jury goes out to deliberate, we will start the next  
10:20:56 20 case. I will have someone else handling the rest of my docket,  
10:20:59 21 and we will just proceed ahead and move through them all.

10:21:05 22 To the extent that anybody desires to combine the  
10:21:10 23 case and have one trial, I am not concerned about the length of  
10:21:14 24 it. I'm here full business days every day, and it matters not  
10:21:21 25 to me if I'm trying one case for six weeks or I'm trying six

10:21:29 1 cases in six weeks. So you need not worry about our end on the  
10:21:35 2 logistics.

10:21:36 3 The plan is going to be to try Bandspeed and CSR. A  
10:21:44 4 judgment is rendered in that case, and then we will get  
10:21:49 5 together and determine what's left to try, and we're going to  
10:21:52 6 schedule it at one time. We will pick the juries. There will  
10:21:58 7 be six-person juries. We will pick the juries on an  
10:22:02 8 accelerated basis, which means there won't be a whole lot of  
10:22:08 9 voir dire. And then we'll try the cases one after the other  
10:22:10 10 until I get this cause resolved.

10:22:14 11 So that's what I'm dealing with, because we're going  
10:22:22 12 to get it resolved. Now while I'm on the question of these  
10:22:26 13 scheduling orders, I note that I have the one problem that  
10:22:33 14 Ms. Frost points out. Are there any other defendants known to  
10:22:39 15 the plaintiff as an end-product defendant who has any  
10:22:44 16 disagreement with any of the proposed scheduling orders that I  
10:22:49 17 received yesterday, which are all combined in some way, shape,  
10:22:54 18 or form into document 867, with exhibits for purposes of the  
10:23:00 19 Court's record. And I want to hear if anybody else has any  
10:23:03 20 violent disagreement with any of this?

10:23:14 21 MR. BOICE: Your Honor, we have proposed some --

10:23:16 22 THE COURT: State who you are.

10:23:17 23 MR. BOICE: I'm sorry. Bill Boice for Motorola  
10:23:20 24 Mobility and Motorola Solutions. We have proposed some minor  
10:23:24 25 modifications to the proposed schedule that Bandspeed sent to

10:23:29 1 us last night. And our proposal is Exhibit B, and then there's  
10:23:33 2 a red line of the two, which is Exhibit C -- or attachment C I  
10:23:37 3 think is what it's called -- to what you have there,  
10:23:40 4 Your Honor.

10:23:40 5 THE COURT: I have that. Have you had time to  
10:23:42 6 discuss those minor proposals with Bandspeed?

10:23:48 7 MR. BOICE: No, Your Honor. I don't believe we  
10:23:50 8 have. And we can do that. We just have not had chance to do  
10:23:56 9 that. We may have had some discussions over the course of  
10:23:59 10 time, but we did not yesterday have a discussion, Your Honor.

10:24:04 11 THE COURT: All right. Well, what I want is for you  
10:24:06 12 to have that discussion, and I want to know what can be agreed  
10:24:11 13 on. And then I want to know with specificity what the open  
10:24:15 14 issues are, and I will just make the decision as to how I'm  
10:24:20 15 going deal with scheduling this case. I'm not going to spend a  
10:24:26 16 lot of time talking to everybody about that.

10:24:28 17 MR. BOICE: Your Honor, if I might, I will tell you  
10:24:30 18 that we generally agree with the approach that Bandspeed has  
10:24:34 19 taken and agree with most of the dates. Consequently, we tried  
10:24:37 20 to use their schedule, and we made just some edits to it to add  
10:24:41 21 in and change a few dates because of our inability to meet  
10:24:45 22 those dates. And then we put in couple of additional things  
10:24:48 23 that we can discuss with them.

10:24:50 24 But the general concept of waiting until after the  
10:24:52 25 CSR trial and beginning discovery then and up until that point

10:24:58 1 focusing on CSR discovery, we agree with and focusing on  
10:25:03 2 stipulated discovery, we agree with. We have -- we just got  
10:25:07 3 the proposed stipulated discovery on Monday. They actually  
10:25:11 4 served it on Friday, but we got it on Monday. And we're  
10:25:13 5 talking with our client and going through that. And we do need  
10:25:16 6 to meet with them, and I do believe we will be able to come to  
10:25:20 7 a substantial agreement on that. The concept is agreeable with  
10:25:23 8 us.

10:25:24 9 THE COURT: All right. Thank you. Anyone else who  
10:25:27 10 desires to speak?

10:25:32 11 MR. NASH: Your Honor, Bill Nash for Kyocera. Just  
10:25:35 12 because of the rush last night of putting out our revision to  
10:25:38 13 that, we did run into a typographical error. I just wanted to  
10:25:46 14 point that out. We failed to insert a mandatory settlement  
10:25:49 15 conference which Kyocera feels it may be time for the parties  
10:25:54 16 to get together with a mediator and try to discuss this.

10:25:57 17 Kyocera would suggest July of 2012 and no later than  
10:26:02 18 that. We've had the Markman, there's been some fact discovery,  
10:26:05 19 and some possibility, one would hope, that all around the table  
10:26:14 20 we might be able to resolve it.

10:26:16 21 THE COURT: What date did you suggest?

10:26:18 22 MR. NASH: We're just suggesting no later than July  
10:26:21 23 2012, before we get going into the next phase of all this  
10:26:24 24 discovery and attorney time and expert time.

10:26:26 25 THE COURT: Mr. Goodpastor?

10:26:29 1 MR. GOODPASTOR: I think we could confer with our  
10:26:31 2 client on that and get back with Mr. Nash very quickly. We're  
10:26:35 3 generally open to settlement discussions, of course. It would  
10:26:37 4 just be the timing and how he wants to structure it that we  
10:26:40 5 need to check with the client on, Your Honor.

10:26:44 6 THE COURT: All right.

10:26:45 7 MR. GOODPASTOR: I do have two very specific  
10:26:47 8 proposals regarding how to resolve the discovery issues in this  
10:26:50 9 case and the issues regarding the pending orders that I'd like  
10:26:55 10 to address, if you don't mind?

10:26:57 11 THE COURT: I don't mind.

10:26:58 12 MR. GOODPASTOR: We have -- and I can show you,  
10:27:01 13 Your Honor. We have sort of a time line that I can hand to the  
10:27:25 14 Clerk.

10:27:25 15 THE COURT: Is this what you put in your letter?

10:27:27 16 MR. GOODPASTOR: This is essentially a time line of  
10:27:29 17 our efforts to --

10:27:30 18 THE COURT: Well, I don't want to hear what you have  
10:27:33 19 done and what CSR has blocked you from doing. I've got far too  
10:27:40 20 many better things to do with my time at this point than  
10:27:45 21 determine who has been reasonable and who has not been  
10:27:48 22 reasonable. Honestly, I don't care.

10:27:50 23 MR. GOODPASTOR: Understood. And so I'll get  
10:27:52 24 directly to our proposal.

10:27:54 25 THE COURT: All right.

10:27:55 1 MR. GOODPASTOR: We have given proposed stipulated  
10:27:58 2 discovery to CSR, to the end-product defendants, and to  
10:28:02 3 Bluetooth SIG. They all have that. CSR has had it since March  
10:28:06 4 28th, and end-products defendants have had it since last Friday  
10:28:09 5 or Monday. Bluetooth SIG just got it a couple of days ago.

10:28:14 6 What we propose is basically a very narrow set of  
10:28:17 7 discovery and make it very easy for them to respond. What we  
10:28:20 8 propose is all those defendants provide their responses to all  
10:28:23 9 of the items we put in that stipulated discovery by April 19th;  
10:28:27 10 that by that date, CSR provide a list of items in their  
10:28:32 11 proposed stipulated discovery that they gave to Bandspeed that  
10:28:36 12 has not already been provided in the 425,000 of pages of  
10:28:40 13 documents that we produced to CSR already; and that we hold a  
10:28:45 14 further status conference on April 23rd.

10:28:47 15 Come here, tell you exactly what's still in dispute,  
10:28:50 16 and at that time set a very accelerated briefing schedule for  
10:28:56 17 any motion to compel that may be required with the hope of --  
10:28:59 18 with that oversight and that schedule, that such a motion to  
10:29:04 19 compel would not be required.

10:29:06 20 We think that would be the most efficient way to  
10:29:08 21 getting what we need to prosecute the case without taking the  
10:29:11 22 Court's time and without actually -- actually minimizing the  
10:29:16 23 burden on the defendants in terms of discovery.

10:29:18 24 So those dates again would be responses from all the  
10:29:22 25 defendants by April 19th, CSR provide a list of documents it

10:29:26 1 believes it does not already have by that date, further status  
10:29:29 2 conference by April 23rd, and then at which time we set a  
10:29:32 3 briefing schedule with a four-day response date on the motion  
10:29:35 4 to compel, if necessary.

10:29:36 5 With regard to the --

10:29:38 6 THE COURT: Tell me who disagrees with that.

10:29:42 7 MR. BOICE: We disagree with those dates,  
10:29:44 8 Your Honor. We can't do it. Bill Boice, again, for Motorola.

10:29:49 9 We just got this, like I said, on Monday and there  
10:29:52 10 are a number of things that we could do.

10:29:55 11 THE COURT: That's fine. I just want to know who  
10:29:58 12 objects to it.

10:29:59 13 Ms. Frost?

10:30:00 14 MS. FROST: Yes, Your Honor. We object to the timing  
10:30:02 15 as well.

10:30:03 16 THE COURT: Well, April 23rd is out, because I don't  
10:30:05 17 have any time to hear you on anything this month. May is bad  
10:30:08 18 enough, but this month is a goner. On April 23rd,  
10:30:11 19 particularly, I have pretrial conferences in the morning and  
10:30:14 20 then I have naturalization ceremony in the afternoon that I  
10:30:17 21 will be preparing for. I have a speaker coming in from out of  
10:30:21 22 town to speak to the soon-to-be-established new citizens. The  
10:30:28 23 proceeding is at the LBJ Auditorium, and we anticipate 300 to  
10:30:33 24 400 new citizens. And there certainly is no time that day to  
10:30:37 25 hold another conference in this case.

10:30:40 1 MR. GOODPASTOR: Given that --  
10:30:41 2 THE COURT: Mr. Whittlesey, please rise.  
10:30:44 3 MR. WHITTLESEY: Yes, sir. David Whittlesey on  
10:30:46 4 behalf of Toshiba. I had a brief conversation with  
10:30:49 5 Mr. Goodpastor this morning. I just want to make sure that  
10:30:52 6 we're on the same page. You had proposed April 19th for us to  
10:30:57 7 get back to you on whether or not we could comply with your  
10:31:00 8 proposed limited discovery. And if there are disputes, then we  
10:31:03 9 could talk about the disputes. Not to actually provide you  
10:31:06 10 with all the discovery one week from today. I think you may  
10:31:09 11 have -- some defendants may be misunderstanding what you're  
10:31:12 12 saying.

10:31:12 13 MR. GOODPASTOR: No. You're correct,  
10:31:14 14 Mr. Whittlesey. We would want the responses by the 19th. We  
10:31:17 15 put in our scheduling order that --

10:31:18 16 THE COURT: How do you define responses? The  
10:31:20 17 response Mr. Whittlesey refers to or the response to your  
10:31:24 18 requested discovery? That's where the -- am I wrong,  
10:31:28 19 Mr. Whittlesey?

10:31:30 20 MR. WHITTLESEY: What I'd understood him to say is  
10:31:32 21 he's given us a list of stipulated discoveries as, Can you give  
10:31:36 22 us this information? A lot of the defendants just got it this  
10:31:38 23 week. What I'd understood he was asking is we're going to get  
10:31:40 24 back to him within one week and say, yes, we can do item one;  
10:31:43 25 no, we can't do item two; yes, we can do item three. Try to

10:31:48 1 limit the scope of the disagreement, if any, and maybe we can  
10:31:52 2 do all of it. But that's what I understood by the proposal.

10:31:55 3 THE COURT: Is that what you understand?

10:31:56 4 MR. GOODPASTOR: Yes, Your Honor. I think I misused  
10:31:59 5 the word "response."

10:32:00 6 THE COURT: And you thought if you got that  
10:32:02 7 information, then everybody would be ready to have a status  
10:32:08 8 conference by the 23rd with this many people, that you could  
10:32:11 9 sit down and discuss it all on Friday and over the weekend and  
10:32:14 10 be back in here on Monday? I think that's a little optimistic  
10:32:19 11 based on everything else that has gone on in this case.

10:32:21 12 MR. GOODPASTOR: Given the information about your  
10:32:23 13 availability, Your Honor, essentially what we're dealing with  
10:32:26 14 is Mr. Whittlesey and members of the firm that's co-counsel  
10:32:30 15 with him, Ms. Frost, and counsel for Bluetooth SIG. The  
10:32:36 16 defendants have done a good job of appointing a liaison counsel  
10:32:38 17 to address a lot of these issues.

10:32:40 18 But given your schedule and the inability to meet on  
10:32:42 19 the 23rd, we may just have a date that you set whereby we file  
10:32:49 20 just a joint status report and we have an agreed briefing  
10:32:53 21 schedule for a motion to compel on some other date you set  
10:32:56 22 today. And we don't need a status conference in front of  
10:33:00 23 Your Honor. I think what will motivate the parties to reach  
10:33:03 24 agreement is the fact that there are firm deadlines -- firm  
10:33:05 25 deadlines by which we get answers to whether they agree or

10:33:09 1 don't agree, firm deadlines by which we report to the Court,  
10:33:15 2 and a firm deadline by which a response is due.

10:33:18 3 THE COURT: Well, it might have helped you, but it  
10:33:20 4 hasn't helped me, because every time I roll over, I find  
10:33:20 5 there's another case pending somewhere in the country involving  
10:33:24 6 these same issues, which I was annoyed about when there was one  
10:33:27 7 in the Eastern District, I was annoyed when there was one in  
10:33:34 8 Arizona, and now I find there's one in California. And I go  
10:33:37 9 back to where I was two years, and I'm not going to ask you-all  
10:33:43 10 to explain it now. But I will never understand why you have  
10:33:50 11 been filing cases all around the country, which does nothing  
10:33:53 12 but disrupt scheduling orders every time one Court thinks that  
10:33:58 13 the Court is ruling on something.

10:33:59 14 It seems to me that all the other judges seem to  
10:34:02 15 think they're coming here. I've now gotten the Arizona case.  
10:34:06 16 I will admit to you there might be a certain amount of payback  
10:34:11 17 in there because I sent a complex case to the District of  
10:34:15 18 Arizona about eight months ago, and I have a suspicion that the  
10:34:21 19 judges were lying in wait to see if something came that they  
10:34:25 20 could send back to me. And so that's why I got the part of  
10:34:28 21 this case. What is going to happen with the California case?

10:34:34 22 MR. GOODPASTOR: Your Honor, we've -- the California  
10:34:35 23 case was filed on January 20 approximately -- a little bit over  
10:34:40 24 a month after you issued your order requiring claims be filed  
10:34:43 25 in this litigation. The California case expressly refers to

10:34:49 1 the patents in suit in this litigation. It expressly refers to  
10:34:53 2 this litigation itself. Claims are we think virtually  
10:34:57 3 identical to some of the defenses and counterclaims asserted by  
10:35:00 4 CSR in this litigation. And we share your, sort of,  
10:35:03 5 frustration and questioning about why it was even filed in that  
10:35:05 6 state.

10:35:05 7 So there is a motion to dismiss or, in the  
10:35:08 8 alternative, a transfer filed on March 28th by Bandspeed.

10:35:12 9 THE COURT: I can tell you what's going to happen.

10:35:14 10 MR. GOODPASTOR: We don't know what's going to happen  
10:35:16 11 with that.

10:35:17 12 THE COURT: I could guess.

10:35:18 13 MR. GOODPASTOR: We could guess, too, but --

10:35:18 14 THE COURT: This may be patent law, but it's not  
10:35:21 15 always rocket science.

10:35:22 16 MR. GOODPASTOR: That's true, despite what we'd like  
10:35:25 17 to tell ourselves.

10:35:27 18 The two issues of the Arizona and the California  
10:35:29 19 case, and Mr. Smith I believe is on the phone and I think  
10:35:32 20 counsel for CSR is also on phone in those cases as well. But  
10:35:37 21 we believe those cases, along with another California patent  
10:35:40 22 case, basically where CSR required patents and then filed suit  
10:35:45 23 against us the next day, we think those are retaliatory. And  
10:35:48 24 we think that those will be resolved, or those issues will be  
10:35:52 25 resolved or the dispute will be resolved by the trial that

10:35:55 1 you've already set for scheduling here.

10:35:57 2 And so with respect to the transferred Arizona case  
10:36:01 3 and the transfer -- what we think will probably be the  
10:36:05 4 transferred of California case, we think that those transferred  
10:36:07 5 cases should essentially be put on a schedule that begins after  
10:36:14 6 the trial of the CSR-Bandspeed case ends in February. And we  
10:36:18 7 think at that time it will be likely that you won't even have  
10:36:21 8 to proceed with those other cases.

10:36:25 9 THE COURT: Well, I'm going to tell you about those  
10:36:29 10 other cases. To the extent they come here, I'm going to try  
10:36:31 11 any issues in them that are between Bandspeed and CSR on the  
10:36:36 12 trial setting that I have now. I am not going to hold any  
10:36:40 13 Bandspeed-CSR issues back. I want everybody to be clear on  
10:36:44 14 that. What I'm holding back are the cases that we -- that I've  
10:36:51 15 always referred to as the non-CSR defendants, because I want to  
10:36:58 16 get the manufacturing claims done, as I made clear in my order  
10:37:03 17 and in the last discussion we had, where we discussed the  
10:37:11 18 correct way to go or not. And I understand there's a  
10:37:14 19 misunderstanding -- I mean disagreement. But rightly or  
10:37:16 20 wrongly, I've determined that's the way I'm going to do it.

10:37:20 21 So it's only going to be the end-product defendants'  
10:37:22 22 cases that are going to have issues held until after that. I'm  
10:37:27 23 not going to -- if it comes in from California, fine. Arizona  
10:37:31 24 is here. But one of the reasons that I have my staff contact  
10:37:34 25 you to tell all sides if you wanted to have Arizona counsel

10:37:38 1 present by phone for this hearing, you could, was to make it  
10:37:41 2 clear that I'm going to try all of the Bandspeed-CSR issues at  
10:37:46 3 one time, however long it takes.

10:37:47 4 MR. GOODPASTOR: Your Honor, there are a couple of  
10:37:49 5 issues involved with that and -- that we're going to need to  
10:37:53 6 address and we may not be able to address them today. One is  
10:37:56 7 that Bandspeed is represented by separate counsel in both the  
10:37:59 8 California and the Arizona case.

10:38:00 9 THE COURT: Number one, they're going to have to work  
10:38:02 10 that out. Your client is going to have to work that out with  
10:38:05 11 you and the other lawyers.

10:38:06 12 MR. GOODPASTOR: The other issue is that the transfer  
10:38:08 13 of those cases and resolution of those issues on the current  
10:38:12 14 trial schedule is going to be very difficult for Bandspeed with  
10:38:15 15 regard to those -- those particular actions in those cases. In  
10:38:21 16 fact, they're both at very early stages. One hasn't even  
10:38:24 17 proceeded to Markman. We would like the opportunity to confer  
10:38:31 18 with Arizona and California counsel and with CSR to discuss the  
10:38:34 19 scheduling of those.

10:38:36 20 THE COURT: Well, you need to do that, because I'm  
10:38:38 21 not going to be inclined to try Bandspeed-CSR issues  
10:38:41 22 separately.

10:38:43 23 MR. GOODPASTOR: Okay. Then what we will do, then,  
10:38:45 24 is confer with CSR and come up with a revised schedule for the  
10:38:49 25 current trial between the two parties.

10:38:52 1 THE COURT: Well, you need to give primary  
10:38:54 2 consideration to how quickly you can get discovery done in it,  
10:38:58 3 because I'm not very sympathetic to extending things. I'll  
10:39:03 4 just tell you that.

10:39:05 5 MR. GOODPASTOR: We understand that. We don't  
10:39:06 6 believe in the case of the Arizona case or the California case,  
10:39:10 7 we were the cause of that. Because I'm not counsel in those  
10:39:15 8 cases, I don't know what discovery is needed and what timing is  
10:39:18 9 required. I will agree that we will do our very best to confer  
10:39:22 10 as quickly as possible and try to get some agreement with CSR  
10:39:26 11 and put it in front of you.

10:39:27 12 THE COURT: Well, I think all we can really  
10:39:29 13 accomplish today is a time to get me a joint status report on  
10:39:33 14 all of the matters that we have discussed here today so I can  
10:39:37 15 look at the filings and determine what I'm going to do with my  
10:39:42 16 schedule. Know this: The schedule is going to be fast, and  
10:39:47 17 the chances of it being perceptively slower than what is  
10:39:53 18 expressed in my existing order are not very good.

10:39:57 19 I've had this case or part of this dispute hanging  
10:40:01 20 around with me for longer than I care. My docket is doing  
10:40:06 21 nothing but getting larger. In this month alone I tried a  
10:40:13 22 civil jury case the first week of the month, I had a bench  
10:40:16 23 trial this week and a preliminary injunction hearing that we  
10:40:21 24 wrapped up this morning on whether I'm going to preliminarily  
10:40:25 25 enjoin a 100-million-dollar highway project. I have a jury

10:40:30 1 trial that I'm starting on Monday. May is only marginally  
10:40:37 2 better, but that is the way the docket is going.

10:40:40 3 The Congress shows no sympathy to the dockets any  
10:40:44 4 where in this country, so I do not believe I'm going to have a  
10:40:48 5 third federal judge. Judge Sparks' docket is every bit as busy  
10:40:53 6 as mine. So when I find a hole and render scheduling orders,  
10:40:59 7 every lawyer who practices in front of me needs to know that  
10:41:04 8 it's going to be much harder to get any relief from those  
10:41:07 9 orders just because I have a lot of demands on my time and a  
10:41:11 10 lot of cases that we try.

10:41:14 11 Now, Mr. Whittlesey, let me ask you: What do you  
10:41:21 12 think would be a reasonable period of time, since you had an  
10:41:25 13 issue with a disclosure on the 19th and then a hearing on the  
10:41:32 14 23rd, how much time do you think is necessary to get a  
10:41:38 15 follow-up joint status report to this court.

10:41:42 16 MR. WHITTLESEY: I certainly think, Your Honor,  
10:41:44 17 within two weeks we ought to be able to get back in touch with  
10:41:49 18 them and let them know what issues we have with the discovery  
10:41:53 19 and then confer.

10:41:54 20 THE COURT: Tell me when -- do you think the joint  
10:41:56 21 status report could be filed in two weeks?

10:41:59 22 MR. WHITTLESEY: Two weeks?

10:42:00 23 THE COURT: That's what I'm interested in.

10:42:03 24 MR. WHITTLESEY: Two weeks, Your Honor, would be  
10:42:05 25 fine.

10:42:06 1 THE COURT: Mr. Goodpastor, do you think that will  
10:42:09 2 work for you?

10:42:10 3 MR. GOODPASTOR: That will work for us, Your Honor,  
10:42:11 4 provided we get the response in a timely manner, which I think  
10:42:16 5 we can most likely work out with Mr. Whittlesey.

10:42:18 6 THE COURT: Well, it sounds like there's not any  
10:42:20 7 reluctance on getting you the information you need. It's a  
10:42:22 8 question of how much time it's going to take. I didn't hear  
10:42:25 9 anybody saying they're not willing to do that. It's just that  
10:42:29 10 it couldn't be done on the schedule you first suggested. If  
10:42:32 11 somebody disagrees with that, let me know.

10:42:38 12 MS. FROST: Excuse me, Your Honor. This is  
10:42:40 13 Claudia Frost for CSR. I'm not sure whether I'm on this status  
10:42:44 14 report on these scheduling issues and discovery. But if I am,  
10:42:48 15 with respect to Mr. Goodpastor's suggestion that it can be done  
10:42:52 16 promptly, basically, what has happened is they recently  
10:42:56 17 produced the documents they produced in the Eastern District to  
10:42:59 18 us. We haven't even seen them yet. They're being loaded on a  
10:43:03 19 computer database.

10:43:06 20 Instead of providing us answers to the questions of  
10:43:09 21 whether Bandspeed can comply with our stipulated discovery  
10:43:13 22 requests, they're basically telling us to look through the  
10:43:17 23 400,000 pages they've given us and if there's anything else we  
10:43:20 24 want, tell them. And I think that's very inefficient, and I  
10:43:25 25 certainly cannot commit to do that in two weeks. So if they

10:43:28 1 could work with me a little bit to try to give me some better  
10:43:30 2 clues about whether they've produced is covered by my topics, I  
10:43:34 3 could probably meet that schedule.

10:43:35 4 THE COURT: Mr. Goodpastor, tell her right now.

10:43:39 5 MR. GOODPASTOR: What we proposed is that we get a  
10:43:42 6 response from CSR in terms of discovery we asked for from them  
10:43:46 7 and that they tell us, after we've already complied with all of  
10:43:49 8 the discovery requests that they've asked for and produced the  
10:43:53 9 documents they've asked for, what they think is missing. We've  
10:43:56 10 already complied with their single request for production that  
10:44:00 11 they've issued.

10:44:01 12 THE COURT: She says, based on what you complied  
10:44:03 13 with, she can't know what else she needs in two weeks.

10:44:09 14 MR. GOODPASTOR: Well, we -- I think we can get a  
10:44:11 15 response from CSR to whether they're going to agree to our  
10:44:15 16 request for discovery in two weeks. It seems clear we can do  
10:44:18 17 that. If they need more time to tell us what else they need  
10:44:21 18 from us, we're willing to give them more time. But with  
10:44:24 19 respect to the discovery we are asking for from them ...

10:44:28 20 THE COURT: Well, let me just tell you-all again.  
10:44:30 21 I'm not going to be in the time business in this case. All of  
10:44:33 22 these discussions we're having now are things that should have  
10:44:36 23 been done a year ago. We should have been at this stage a year  
10:44:40 24 ago in this case. I'm not pleased with either of the major  
10:44:43 25 sides in this case. And to a degree, I rue the day that I

10:44:49 1 allowed CSR's intervention, because I might have been able to  
10:44:52 2 try all of these other people by now and had them out of it and  
10:44:57 3 then having the debate with CSR on who is liable and who is  
10:45:01 4 not.

10:45:02 5 But, you know, I'll tell you both, Ms. Frost, I'm not  
10:45:05 6 looking at giving people a large amount of time here.

10:45:10 7 Mr. Goodpastor, when did you produce these documents from the  
10:45:15 8 Eastern District of Texas?

10:45:17 9 MR. GOODPASTOR: April 5th, Your Honor.

10:45:18 10 THE COURT: That's pretty -- you know, this case came  
10:45:21 11 to me, when, last September from the Eastern District of  
10:45:24 12 Texas? August? It was before Judge Ward retired, because that  
10:45:27 13 was his going-away present. Had he taken senior status, I  
10:45:31 14 would have had a way to get back at him. But he retired so he  
10:45:35 15 could avoid anything I might do to him.

10:45:39 16 MR. GOODPASTOR: We -- frankly, we anticipated  
10:45:43 17 producing that discovery. We proposed that form production in  
10:45:47 18 our discovery order. We sent a similar request to CSR to see  
10:45:51 19 if they would agree to that. I think we informed the Court  
10:45:54 20 that their request to us actually complied with our proposed  
10:45:58 21 discovery order. We couldn't get agreement from CSR to do  
10:46:02 22 that, so we just produced it as quickly as we could. We  
10:46:04 23 re-labeled everything, got it over to them as quickly as we  
10:46:07 24 could, and said, Here it is. Here is everything you asked for.

10:46:09 25 THE COURT: Because of the size of this case, what

10:46:11 1 Bandspeed and CSR needs to do -- and you need to take this  
10:46:15 2 message back to your client -- is they need to have lawyers  
10:46:19 3 doing nothing else but working on this case from that point --  
10:46:24 4 from this point forward, if you don't already have that. And  
10:46:28 5 it needs to be the lawyers that are going to appear in front of  
10:46:31 6 me. If we have got to go through all of this discovery and  
10:46:36 7 what we're going to do before you-all determine if you can  
10:46:39 8 settle the case, that's fine. But I'm not going to give you  
10:46:42 9 much in the way of time to do it. You're just going to -- if  
10:46:45 10 it's that important, you're going to have to put the manpower  
10:46:49 11 on it to get it done on a short schedule.

10:46:51 12 MR. GOODPASTOR: What we propose is that CSR provide  
10:46:54 13 their response to our stipulated discovery at the same time the  
10:46:56 14 other defendants do, and then they get an extra two weeks to  
10:46:59 15 provide us with whatever else they need.

10:47:02 16 THE COURT: All right. Let me hear from other  
10:47:03 17 lawyers.

10:47:04 18 MR. BOICE: Your Honor, I just didn't want to mislead  
10:47:06 19 you there about what we are able to provide. I don't know that  
10:47:09 20 we'll be able to provide all the stipulated discovery without  
10:47:12 21 talking to our client and whether we have it or not and whether  
10:47:14 22 it makes any sense or not. I know some of it we clearly will  
10:47:17 23 be able to, but we certainly can meet this schedule to meet  
10:47:21 24 with them and respond to the Court.

10:47:22 25 And, Your Honor, the second thing that, if I might,

10:47:24 1 on the time, you also mentioned that we should get back to you  
10:47:28 2 on the proposed differences in our schedules for the  
10:47:32 3 end-product defendants. And we can meet with them and get that  
10:47:36 4 in the same period of time, if that's what you had in mind.

10:47:39 5 THE COURT: That is what I did have in mind.

10:47:44 6 MR. BOICE: Okay. Thank you.

10:47:45 7 THE COURT: Anybody over here against the wall? Did  
10:47:48 8 y'all have anything you wanted to add?

10:47:53 9 MR. WHITTLESEY: Your Honor, David Whittlesey again.  
10:47:58 10 Just so we're clear, the proposal is we'll get back to  
10:48:01 11 Mr. Goodpastor within a week and then we'll submit the joint  
10:48:04 12 status report in two weeks?

10:48:05 13 THE COURT: What I want is a joint status report no  
10:48:08 14 later than 5 o'clock. That means you don't get to file it at  
10:48:12 15 11:59:55. By 5 o'clock on the April the 22nd. There may be  
10:48:22 16 things you've agreed to. There may be things you haven't  
10:48:25 17 agreed to. These issues on Ms. Frost's concern, all of that  
10:48:31 18 needs to be in the joint status report, and you should tell me  
10:48:34 19 what you have done to try to work those out and what's  
10:48:37 20 realistic.

10:48:38 21 MR. WHITTLESEY: Thank you, Judge.

10:48:39 22 THE COURT: And then I will look at that and see,  
10:48:43 23 once I know what criminal and civil cases I have to try in  
10:48:47 24 May -- right now I continue to have four civil cases pending to  
10:48:53 25 try for May, and right now I have 12 criminal jury trials to

10:48:59 1 try in May. Now, I will tell you all of those cases aren't  
10:49:02 2 going to go to trial. But what we're having with increased  
10:49:06 3 dockets is Judge Sparks and I are finding we're not trying a  
10:49:09 4 higher percentage of our cases than we ever have. But when you  
10:49:13 5 increase the gross number and put the same percentage on it,  
10:49:17 6 that results in more cases and there are no more -- you know  
10:49:22 7 the days in the month do not respond to percentages.

10:49:26 8                 And so that's what we're finding we're having  
10:49:29 9 happening here. We have more cases going to trial, not because  
10:49:33 10 of the number of cases lawyers normally try, but when you have  
10:49:37 11 a larger number and put the same percentage on it, you try more  
10:49:40 12 cases. So I have got to see how that is going to sort itself  
10:49:47 13 out before I know when I'm going to be able to get you back in  
10:49:49 14 here. Ms. Frost, do you have something?

10:49:52 15                 MS. FROST: Yes, Your Honor, I do. I have two brief  
10:49:54 16 things. One to mention -- what I neglected to mention earlier  
10:50:02 17 is the issue of the antitrust claims that are in this case. I  
10:50:06 18 believe all the defendants have been -- or involved in some  
10:50:14 19 antitrust allegation from Bandspeed here. And all of those  
10:50:17 20 claims are basically, except for the claim as to CSR are a  
10:50:21 21 resident in the second phase of the case with the end-product  
10:50:24 22 or customer defendants, as I call them. And it seems to me  
10:50:29 23 logical to put all the antitrust claims, because they're  
10:50:36 24 conspiracy claims, in one bucket.

10:50:38 25                 And so to the extent that requires a modification to

10:50:41 1 the schedule or impacts this schedule -- the scheduling order  
10:50:44 2 that you have before you, I would submit that the CSR part of  
10:50:48 3 that case should reside in that bucket on that schedule.

10:50:53 4 THE COURT: All right. Well, I will submit to  
10:50:55 5 you-all that y'all could explain that in something that  
10:51:03 6 contains no more than three pages and get it to me.

10:51:06 7 MS. FROST: I will do that.

10:51:07 8 THE COURT: This goes much simpler if everybody is  
10:51:10 9 not running around the country filing new lawsuits and  
10:51:13 10 everybody is talking about this case. I put the major burden  
10:51:16 11 on the two of you. I am not pleased with the fact that we have  
10:51:19 12 other litigation filed in the Eastern District of Texas. I am  
10:51:25 13 not pleased with the fact we have other litigation filed in  
10:51:29 14 Arizona. I am not pleased with the fact we have other  
10:51:31 15 litigation filed in California.

10:51:33 16 I understand that you perceive there to be a good  
10:51:35 17 reason for doing that. But due to the fact that those judges,  
10:51:39 18 at least in two out of those three instances, transferred the  
10:51:43 19 cases here, I would think being the good lawyers you are, you  
10:51:49 20 might look at the way you have proceeded in this case and give  
10:51:51 21 some thought to the fact that maybe you're not pleasing any  
10:51:54 22 number of federal judges around the country with what you're  
10:52:02 23 doing, because, you know, we're going to get this done, if I  
10:52:06 24 haven't made that clear. And we're going to get it done pretty  
10:52:09 25 much on the schedule I have, if y'all have to spend 24 hours a

10:52:13 1 day to get it done. So know that.

10:52:16 2 I don't care if you settle it. I don't care if you

10:52:19 3 try it. There is some merit to the idea that's been proposed

10:52:26 4 of mandatory mediation. I will tell you I am not optimistic

10:52:29 5 about that, because every time I've gotten optimistic about

10:52:33 6 anything in this case, it's been like touching a hot stove.

10:52:36 7 But I want in that status report on April 26th, your

10:52:42 8 discussions about mandatory mediation and whether you think it

10:52:48 9 would be helpful and when you think you could get it done and

10:52:52 10 if you have an idea of a mediator. I know several that are

10:52:58 11 good, but I don't handpick that. If the parties want me to

10:53:03 12 select one, I will select one. Otherwise, whoever you think

10:53:06 13 will be good, you can do it if you want to do this.

10:53:09 14 But I will tell you the good mediators that I know,

10:53:13 15 July is pretty close because they fill up and it takes a while

10:53:20 16 to get on their schedule. So if you are seriously considering

10:53:25 17 asking me to order this case to mediation, you need to give

10:53:32 18 some thought about how serious you are about that and whether

10:53:34 19 you have an idea of a mediator and find out from that mediator

10:53:38 20 whether he owns an apartment building so each party can have

10:53:42 21 its own room or series of rooms to be in, because if you're

10:53:47 22 going to try to shoot for July, we're running out of time in a

10:53:52 23 big hurry to do that with people that could actually do you

10:53:55 24 some good if you wanted to do this. So I give you that to

10:54:00 25 think about.

10:54:00 1 MS. FROST: Thank you, Your Honor. One other thing  
10:54:05 2 just to be clear that would be appropriate for the status  
10:54:08 3 report -- I assume that it would be, but just to be sure --  
10:54:12 4 there's a lot of activity right now by Bandspeed in the  
10:54:16 5 United States Patent Office. They are amending a number of  
10:54:20 6 claims that are in the patents-in-suit and, at least with  
10:54:24 7 regard to one of them, have added 400 new claims as of two days  
10:54:29 8 ago. So would you like us to bring that to your attention as  
10:54:32 9 well in the status report or in some separate report or how you  
10:54:36 10 like us to apprise you of --

10:54:37 11 THE COURT: Well, if you would like for me to know  
10:54:40 12 that, I think everyone in this room knows that I am not prone  
10:54:43 13 to stay a case while the PTO looks at re-examination. I  
10:54:47 14 understand that in the last two years they have revised their  
10:54:50 15 rules. I go around, I hear them talk about how streamlined  
10:54:54 16 they are, and how they're dealing with things faster. I'm not  
10:54:57 17 believing it.

10:55:04 18 I fault the Congress more than I do them. I think  
10:55:07 19 the Congress should have dealt with it in the American Invents  
10:55:12 20 Act parallel proceedings. I don't think any district judge  
10:55:16 21 would mind if the Congress said that the patent office has  
10:55:20 22 primary jurisdiction or if the Congress said that the district  
10:55:23 23 courts have primary jurisdiction. They've chosen not to do  
10:55:27 24 that. So we're still left with that. I as a general rule,  
10:55:31 25 barring -- because I never say never, but barring some huge

10:55:36 1 occurrence, I am not inclined to stay a proceeding in my Court  
10:55:40 2 while I wait around and see what the patent office is going to  
10:55:44 3 do.

10:55:45 4 And when I've looked at what they're doing, I find  
10:55:47 5 out that we get notices that say we're not going to out these  
10:55:54 6 claims. And then six or eight weeks will pass, and I'll get  
10:55:57 7 another notice and I'll find out it doesn't mean what it says  
10:55:59 8 because there's still things going on up there. So they're not  
10:56:01 9 doing anything that helps me get the cases on my docket  
10:56:05 10 resolved by parallel proceedings.

10:56:06 11 So you can report on anything you want to on that.  
10:56:09 12 It's always nice to know. But unless something comes up that  
10:56:14 13 gives me more cold comfort from the PTO than I have now, I'm  
10:56:19 14 not going to put anything off in this case while I wait and see  
10:56:22 15 what they do.

10:56:23 16 MS. FROST: Thank you, Your Honor. We'll put  
10:56:24 17 something in there. I believe there are some intervening  
10:56:25 18 rights issues which may actually have some impact. And we'll  
10:56:27 19 note those with special specificity.

10:56:31 20 THE COURT: So what is the term of these patents? We  
10:56:33 21 have got -- we have bound to eaten into them a lot. And if we  
10:56:37 22 continue to have litigation, can't we all moot the thing  
10:56:44 23 because the patent expired?

10:56:45 24 MR. GOODPASTOR: We think we have several years left  
10:56:47 25 on the patent.

10:56:48 1 THE COURT: I think you might have several years left  
10:56:50 2 before I clear every case that involves every one I'm looking  
10:56:54 3 at.

10:56:58 4 All right. Anything else?

10:56:59 5 MR. GOODPASTOR: Your Honor, I did mention an earlier  
10:57:01 6 proposal regarding the pending discovery orders, the protective  
10:57:04 7 order, the discovery order, and the ESI order. And I would  
10:57:09 8 like to briefly respond to Ms. Frost's comments about the  
10:57:14 9 antitrust claims.

10:57:15 10 We have been working with Ms. Frost back and forth to  
10:57:17 11 try to get something in front of you on the protective order,  
10:57:21 12 the discovery order, and the ESI order that is easier for you  
10:57:24 13 to review because of the different formats that were submitted  
10:57:27 14 by the parties. We have basically met and conferred and come  
10:57:31 15 up with a red line that we can put in front of you, we think --  
10:57:35 16 we wanted to do it before the hearing, but they -- Ms. Frost  
10:57:38 17 wasn't in a position to do it.

10:57:40 18 THE COURT: Put it on a disc, and send it to  
10:57:42 19 Ms. Carmona. She'll tell you how to get it there. I will tell  
10:57:48 20 you that has been a problem, and that's one of the reasons that  
10:57:51 21 you're later -- later than I would normally do, because we have  
10:57:54 22 spent no small amount of time excerpting pieces from both of  
10:57:59 23 your proposals that I thought had merit and coming up with my  
10:58:05 24 own document. If you have made progress on yours and you can  
10:58:10 25 give it to us on a disc that points out exactly where you have

10:58:16 1 disagreement, that would make things go quicker.

10:58:18 2 MR. GOODPASTOR: Okay. And we'd like the parties to  
10:58:20 3 agree to submit that by no later than Monday.

10:58:24 4 MS. FROST: That's fine with us.

10:58:25 5 THE COURT: Whatever you decide to do, put -- or  
10:58:27 6 E-mail it. Ms. Carmona, that would work, wouldn't it? We just  
10:58:31 7 want to get it from you electronically where we have it  
10:58:35 8 electronically so we don't have to retype the whole thing,  
10:58:39 9 which is what we've been doing.

10:58:40 10 MR. GOODPASTOR: That's one of the objections to  
10:58:42 11 producing some documents we've had, is the protective order.  
10:58:43 12 So I think we can resolve that pretty quickly.

10:58:45 13 THE COURT: Well, and that's one of my irritations,  
10:58:46 14 because I have never been able to figure out why lawyers can't  
10:58:49 15 agree on the form of protection you're going to put on it,  
10:58:53 16 because -- know this, because some of you don't know my  
10:58:58 17 thinking. Some of you are getting the idea that when you file  
10:59:02 18 all these things under seal that I think lawyers want to much  
10:59:04 19 sealed. We live -- we have a transparent court system. We've  
10:59:08 20 had this current court system since 1789, or shortly  
10:59:14 21 thereafter, since the Judiciary Act.

10:59:18 22 It is an open system. If you choose to go into  
10:59:20 23 court, you don't get to do it secretly. That's why during the  
10:59:25 24 discovery phases I will allow sealing of documents that you may  
10:59:29 25 assert are proprietary or something to that effect and why I

10:59:34 1 generally don't allow the sealing of pleadings, because I think  
10:59:37 2 anyone here should be an adept enough pleader to plead  
10:59:44 3 something that doesn't disclose proprietary or sensitive  
10:59:48 4 information. And if you can't do that, then you need to go  
10:59:50 5 back to whoever taught you how to plead things and work on it.

10:59:54 6 Once we get to the trial, it's a different bag of  
10:59:57 7 cat. There's going to be very little that will be sealed. So  
11:00:03 8 once you're putting on your evidence and once you're having  
11:00:06 9 your trial, a lot of this may come out.

11:00:12 10 So know this, so nobody is blind-sided, that it's a  
11:00:16 11 bifurcated deal with me. What I'm going to seal in discovery  
11:00:19 12 is different from what I'm going to seal during trial. So you  
11:00:22 13 need to start thinking about that, because once you're in a  
11:00:25 14 lawsuit, you're in a lawsuit. Once you're in a public trial,  
11:00:28 15 you're in a public trial.

11:00:32 16 MR. GOODPASTOR: One other issue on the antitrust  
11:00:34 17 claims. From earlier statements at an earlier status  
11:00:37 18 conference, the direction that we understood from the Court was  
11:00:40 19 that all the antitrust claims regarding CSR were going to be  
11:00:43 20 resolved in this one case against CSR, including CSR's  
11:00:47 21 California antitrust claims. And we think that's the most  
11:00:49 22 efficient way. We don't leave some claims against CSR hanging  
11:00:52 23 out there, especially ones as important as our conspiracy  
11:00:55 24 claims. So I just want to make sure you knew that we disagreed  
11:00:59 25 with Ms. Frost on this idea of pushing things out.

11:01:02 1 THE COURT: I understand that, and here -- I  
11:01:04 2 understand what Ms. Frost is saying. But CSR has told me  
11:01:08 3 consistently, if we get the claims between Bandspeed and the  
11:01:12 4 manufacturers done, it might resolve a lot of this lawsuit. I  
11:01:15 5 don't know why I would want to get the claims between Bandspeed  
11:01:19 6 and CSR behind me and then have another lawsuit between  
11:01:26 7 Bandspeed and CSR.

11:01:29 8 MR. GOODPASTOR: I would tend to agree with you,  
11:01:31 9 Your Honor.

11:01:31 10 THE COURT: I would rather have a long lawsuit.  
11:01:34 11 Because as I said, by the time we get there, I'm going to have  
11:01:40 12 things I can do with my docket that I cannot do right now.

11:01:43 13 It is likely that Judge Sparks will have taken senior  
11:01:47 14 status by then, and there will be another full-time federal  
11:01:50 15 judge here. Judge Sparks, I feel certain, is going to want to  
11:01:53 16 carry a full senior status docket, which means he's going to be  
11:01:56 17 handling 40 to 50 percent of the normal docket, which  
11:02:00 18 effectively gives me half a judge to work with, which is a big,  
11:02:03 19 big percentage. Plus I'm going to have vacant courtrooms.

11:02:09 20 Austin is a nice place. I already get offers from  
11:02:12 21 judges around the country who would like to come and sit in  
11:02:16 22 Austin. I don't have any place to put them right now. I will  
11:02:19 23 come November. In fact, Judge Head from Corpus strong-armed me  
11:02:24 24 in January and forced me to tell him when I had a February  
11:02:27 25 vacation set and came up here and handled a case in February.

11:02:32 1 He said, You're going to have a vacant courtroom in February.  
11:02:35 2 So let me come up and do that.  
11:02:37 3 So it -- after I get passed November, all of the  
11:02:43 4 docket problems I'm having right now don't go away, but they  
11:02:47 5 become much easier for me to deal with. So you need to be  
11:02:52 6 aware of that.

11:02:53 7 MR. BOICE: May I make one comment in response?

11:02:55 8 MR. GOODPASTOR: Well, one other issue with regard to  
11:02:57 9 the antitrust, if you don't mind. One issue, and I think it  
11:03:01 10 will help us reach agreement on the discovery stipulation that  
11:03:04 11 we're going to report you. The one issue that we've  
11:03:06 12 encountered is that they claim that antitrust discovery isn't  
11:03:11 13 appropriate right now because motions to dismiss are pending.  
11:03:12 14 We disagree with that, and we just don't want to wait another  
11:03:16 15 two weeks to have to put that issue in front of you. We have  
11:03:20 16 prepared a short memorandum on the issue which we could submit  
11:03:23 17 to you at this time.

11:03:24 18 THE COURT: Let me ask you a question: Have I stated  
11:03:28 19 that discovery on that antitrust should be held up while I deal  
11:03:33 20 with motions to dismiss?

11:03:34 21 MR. GOODPASTOR: No, you have not, Your Honor.

11:03:36 22 THE COURT: Then you're eating into your discovery  
11:03:39 23 time. That's all I can tell you. I'm not going to do that *ad*  
11:03:44 24 *seriatim*. I will get to the motions to dismiss as quickly as I  
11:03:47 25 can get to the motions to dismiss. But be forewarned: You

11:03:51 1 should be proceeding with everything.

11:03:54 2 MR. GOODPASTOR: Thank you, Your Honor.

11:03:57 3 THE COURT: Anything else?

11:03:58 4 MS. FROST: I just have two brief responses, if I  
11:04:01 5 may, one on the antitrust claims. I think it is a little  
11:04:05 6 different, Your Honor, than trying all the CSR and Bandspeed  
11:04:08 7 claims in one because the same antitrust claim will be tried  
11:04:15 8 against -- the very same antitrust claim will be tried against  
11:04:18 9 everyone else in that second case. And some of it will  
11:04:21 10 potentially be affected by the licensing defense that's in the  
11:04:25 11 first case. So there is actually some sense to the idea. But  
11:04:28 12 I'll set that out in our status report.

11:04:31 13 The second thing I wanted to clarify, and just to  
11:04:35 14 make sure that I am understanding so I can better communicate  
11:04:38 15 with Mr. Goodpastor to work out whatever differences we have  
11:04:42 16 that remain on our protective order, which are minor, by the  
11:04:46 17 way, they deal primarily with source code and our source code,  
11:04:49 18 which is our crown jewel. So we're trying to be very  
11:04:53 19 protective of that.

11:04:54 20 And one of the things we are working with each other  
11:04:56 21 to try to resolve is some tension between -- the difference  
11:05:00 22 between the way pretrial discovery protection is maintained and  
11:05:05 23 trial protection is maintained. And we are trying to make sure  
11:05:08 24 that our source code receives the same amount of protection in  
11:05:12 25 both proceedings. And I don't take Your Honor's comments today

11:05:15 1 to be contrary to that understanding.

11:05:18 2 THE COURT: They're not contrary to that, but you  
11:05:19 3 shouldn't worry about that as much as you're worried about it.

11:05:24 4 MS. FROST: Okay. Good.

11:05:24 5 THE COURT: What I am concerned about right now is  
11:05:31 6 getting through the discovery phase and you reaching a  
11:05:34 7 protective order on what gives you both cold comfort on  
11:05:38 8 protecting your source code for purposes of discovery, you  
11:05:41 9 get -- by the time we get to trial, a lot of these issues that  
11:05:44 10 I'm dealing with are going to resolve themselves one way or the  
11:05:49 11 other. All of the discovery issues will.

11:05:51 12 You know, discovery is a big deal until you get down  
11:05:54 13 to trying a case, and then none of it shows up in trial. You  
11:05:57 14 know, its as simple as that. So you get another bite at the  
11:06:02 15 apple on how you're going to have your source code protected at  
11:06:05 16 trial. You may write into your protective order, if you can  
11:06:13 17 agree, any language you want about this applies for discovery  
11:06:16 18 purposes and the parties recognize that they will bring it back  
11:06:21 19 up and discuss it when the Court has an opportunity to meet  
11:06:24 20 with you for final pretrial conference before trial. And look  
11:06:29 21 at what you actually need in the way of protection at trial.

11:06:33 22 Because as I told you, I -- public trial is a little  
11:06:38 23 bit different than discovery, but I still recognize that there  
11:06:41 24 are things that are going to need some type of protection. But  
11:06:45 25 whatever you -- you should be concentrating on the protection

11:06:49 1 you need for discovery, and we'll worry about the protection  
11:06:52 2 that you need for trial later. So you get another shot at  
11:06:57 3 that.

11:06:58 4 MS. FROST: Thank you, Your Honor. That's helpful.

11:07:00 5 THE COURT: Anything else?

11:07:02 6 (No response)

11:07:02 7 THE COURT: All right. Glad to have had y'all here  
11:07:05 8 this morning. It's always good to see you. Everybody go out  
11:07:09 9 and plead somebody else so we can have more lawyers here.  
11:07:13 10 We're welcome -- we welcome our friends from the west who are  
11:07:18 11 here by phone today. You know, maybe the next time we have a  
11:07:23 12 hearing, it will be during South by Southwest or one of our  
11:07:27 13 other music festivals and you can come.

11:07:30 14 So at this time, the Court's in recess subject to  
11:07:32 15 reconvening after I see the joint status report we have talked  
11:07:38 16 about. And with regard to Bandspeed and CSR, get what you can  
11:07:42 17 on the protective order to Ms. Carmona electronically as  
11:07:47 18 quickly as you can get it there.

11:07:48 19 Court's in recess.

11:07:50 20 (End of transcript)

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1 **UNITED STATES DISTRICT COURT )**

2 **WESTERN DISTRICT OF TEXAS )**

3 I, Arlinda Rodriguez, Official Court Reporter, United  
4 States District Court, Western District of Texas, do certify  
5 that the foregoing is a correct transcript from the record of  
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with  
8 those prescribed by the Court and Judicial Conference of the  
9 United States

10 WITNESS MY OFFICIAL HAND this the 18th day of April 2012.

11

12 /S/ Arlinda Rodriguez  
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